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Security Council

Fifty-seventh year

Provisional

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Sunday, 30 June 2002, 5 p.m.

New York

President:	Mr. Wehbe	(Syrian Arab Republic)
Members:	Bulgaria	Mr. Tafrov
	Cameroon	Mr. Tidjani
	China	Mr. Zhang Yishan
	Colombia	Mr. Valdivieso
	France	Mr. Levitte
	Guinea	Mr. Boubacar Diallo
	Ireland	Mr. Ryan
	Mauritius	Mr. Koonjul
	Mexico	Ms. Lajous
	Norway	Mr. Kolby
	Russian Federation	Mr. Lavrov
	Singapore	Mr. Mahbubani
	United Kingdom of Great Britain and Northern Ireland	Sir. Jeremy Greenstock
	United States of America	Mr. Negroponte

Agenda

The situation in Bosnia and Herzegovina

Report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina (S/2002/618)

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02-45008 (E)

The meeting was called to order at 5 p.m.

Adoption of the agenda

The agenda was adopted.

The situation in Bosnia and Herzegovina

Report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina (S/2002/618)

The President (*spoke in Arabic*): I should like to inform the Council that I have received letters from the representatives of Bosnia and Herzegovina, Germany and Italy, in which they request to be invited to participate in the discussion of the item on the Council's agenda. In accordance with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr.Kusljugić (Bosnia and Herzegovina) took a seat at the Council table.

The President (*spoke in Arabic*): The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them the report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina (S/2002/618). Members of the Council also have before them document S/2002/712, which contains the text of a draft resolution submitted by Bulgaria, France, Germany, Ireland, Italy, Norway, the Russian Federation and the United Kingdom of Great Britain and Northern Ireland.

It is my understanding that the Council is ready to proceed to the vote on the draft resolution before it. Unless I hear any objection, I shall put the draft resolution to the vote now.

There being no objection, it is so decided.

I shall first call on those members of the Council who wish to make statements before the voting.

Mr. Negroponte (United States): The long-standing commitment of the United States to peace and stability in the Balkans is beyond question. We have also been clear and consistent about our concerns on the question of the International Criminal Court (ICC), in particular the need to ensure our national jurisdiction over our personnel and officials involved in United Nations peacekeeping and in coalition-of-the-willing operations.

As you are well aware, this is not the first time we have raised this issue with the Council. I explained these concerns when we dealt with the United Nations Mission of Support in East Timor (UNMISET) in May. The United States voted in favour of the East Timor resolution with the expectation that the Council would address our concerns before the ICC came into effect on the first of July. In East Timor only three United States soldiers participate in the United Nations peacekeeping mission; we intend to withdraw them absent a solution to this question.

It is with great regret that the United States finds itself on the eve of that date, and despite our best efforts, without a solution.

The United States has contributed — and will continue to contribute — to maintaining peace and security in the Balkans and around the globe. Contributing personnel to peacekeeping efforts demonstrates a commitment to international peace and security that, as you all know, can involve hardship and danger to those involved in peacekeeping. Having accepted these risks by exposing people to dangerous and difficult situations in the service of promoting peace and stability, we will not ask them to accept the additional risk of politicized prosecutions before a court whose jurisdiction over our people the Government of the United States does not accept.

Some contend that our concerns are unwarranted. With our global responsibilities, we are and will remain a special target and cannot have our decisions second-guessed by a court whose jurisdiction we do not recognize.

With the court coming into being, this problem must be resolved — but in a way that takes into account two hard facts: the United States wants to participate in international peacekeeping, but the United States, a major guarantor of peace and security around the globe and a founding member of the United Nations, does not and will not accept the jurisdiction of

the ICC over the peacekeepers that it contributes to operations established and authorized by the United Nations.

The failure of the Security Council to act to preserve an appropriate legal status for United States and other non-ICC party peacekeepers can only end in damage to international peacekeeping generally. We believe that none of this is of our making. We have offered a practical solution to this problem that would preserve everyone's interests, protect international peacekeeping and strengthen the hand of this Council to maintain international peace and security.

We have scrupulously sought to find a way forward that is consistent both with others' obligations to the Rome treaty and with United Nations peacekeeping practice. Furthermore, we have accepted the principle that this solution should apply only to States that are not party to the ICC.

Let me repeat: there is no inherent reason why States that have signed or even ratified the Rome Treaty cannot also support our proposed solution. Our proposal calls for establishment of immunity for United Nations peacekeeping. It builds on immunities that are already recognized in the United Nations system and reflected in status of forces and status of mission agreements. The Rome Treaty itself recognizes the concept of immunity. If the Security Council decides that its ability to maintain international peace and security will be enhanced by providing immunity to United Nations peacekeeping, it may provide such immunity. The framers of the ICC Treaty surely could not limit the authority of the Security Council in that regard. The consequence of providing United Nations peacekeepers with such immunity would be the creation of a legal obligation on States to observe that immunity. Pursuant to article 98 of the ICC Treaty, the compliance of ICC parties with such obligations is entirely consistent with the Treaty.

It strikes us as more than perplexing that others that are parties to the ICC can use the provision of the Treaty to exempt their forces for an extended period from the purview of the Court for war crimes and then suggest that our attempt to use other provisions of the Treaty similarly to provide protection for our forces either violates their Treaty obligations or does unacceptable damage to the spirit of the Treaty.

The United States will vote against this draft resolution with great reluctance. This decision is not directed at the people of Bosnia. We will stand by them and by our commitment to peace and stability in the Balkans. The fact that we are vetoing this draft resolution in the face of that commitment, however, is an indication of just how serious our concerns remain about the risks to our peacekeepers.

The President (*spoke in Arabic*): I now put to the vote the draft resolution contained in document S/2002/712.

A vote was taken by show of hands.

In favour:

Cameroon, China, Colombia, France, Guinea, Ireland, Mauritius, Mexico, Norway, Russian Federation, Singapore, Syrian Arab Republic, United Kingdom of Great Britain and Northern Ireland

Against:

United States of America

Abstaining:

Bulgaria

The President (*spoke in Arabic*): The result of the voting is as follows: 13 votes in favour, 1 against and 1 abstention. The draft resolution has been not adopted owing to the negative vote of a permanent member of the Council.

I should like, before calling on those members who wish to make statements following the voting, to welcome the Secretary-General, His Excellency Mr. Kofi Annan, and to give him the floor.

The Secretary-General: Today, the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) comes to an abrupt end for reasons that are unrelated to the vitally important work that it is performing to implement the Dayton Peace Agreement. The United Nations Mission has made a universally recognized contribution to the re-establishment of the rule of law and political stability in Bosnia and Herzegovina by transforming a 40,000-strong wartime militia into a 14,000-strong professional police force.

But the State and its institutions are still fragile and are under pressure from nationalist forces. Unless an agreement can be reached on an orderly wind-down of the Mission, the police in Bosnia will be left unmonitored, unguided and unassisted. Key programmes, including the control of the borders by a professional State Border Service — a key instrument

for fighting contraband activities and illegal immigration — will be left uncompleted. Further, the long-planned handover to the European Union Police Mission scheduled to take place at the year's end, when UNMIBH would have successfully completed its mandate, will be severely compromised.

I take this opportunity to express my sincere gratitude to all men and women in UNMIBH for their exemplary work, and to the nations which have generously contributed their civilian police officers to this critical and complex mandate.

The people of Bosnia and Herzegovina are beginning to reap the fruits of the international community's assistance after the country was ripped apart by war from 1992 to 1995. It would be most unfortunate if the premature termination of UNMIBH's mandate were to set back that process. It would be perceived throughout the Balkans as a diminution of the international community's commitment to stability in the region.

More generally, I remain convinced that United Nations peacekeeping is an indispensable tool for the international community's promotion of global peace and security. I appeal to members of the Security Council to intensify the high-level negotiations, including in capitals, of the past weeks so as to find a solution acceptable to all concerned that respects the principles of the Charter of the United Nations and treaty obligations of Member States. The world cannot afford a situation in which the Security Council is deeply divided on such an important issue which may have implications for all peace operations.

The President (*spoke in Arabic*): I thank the Secretary-General for his statement.

Mr. Tafrov (Bulgaria) (*spoke in French*): I wish to begin by thanking the Secretary-General for the statement he just made. I endorse every word of it. He was right to focus his statement on Bosnia and Herzegovina — a new, fragile State in South-Eastern Europe, which has experienced very difficult times, as we all know, and which does not deserve that. Bulgaria has frequently expressed its appreciation and support for the United Nations Mission in Bosnia and Herzegovina as a stabilizing factor not only for that country, but for the region as a whole. We take this opportunity to confirm our support and to thank the men and women who have done such excellent work.

I also wish to emphasize that, as a State party to the Rome Statute, Bulgaria strongly supports the principles and values applied therein and will work to strengthen the International Criminal Court so that it can become an effective organ for the international community to combat the most serious crimes and immunity and for justice against war criminals.

At the same time, my country wished to abstain in the vote on the draft resolution, not because we do not support the principle of a United Nations presence in Bosnia and Herzegovina. To the contrary, we do. We wanted to draw attention to a very serious situation to which the Secretary-General referred, which is the lack of unity in the Council on this issue. That is a very serious situation. We trust that the disappearance of a United Nations presence from Bosnia and Herzegovina will be temporary.

As I said during our closed consultations, we appeal to all Security Council members to seek compromise. As the members of the Council are aware, during informal contacts in the past few days, my delegation proposed various formulas to get out of the situation in which we find ourselves today. However, we did not succeed. That is why my country abstained in the vote on this draft resolution.

In conclusion, I wish to express once again the hope that Council unity will be restored very soon.

Mr. Levitte (France) (*spoke in French*): France deeply regrets the present situation. Intensive negotiations were held this past week in the Security Council and among our various capitals. Despite the efforts made, no solution reconciling the various interests was agreed.

The veto of the United States is a threat to the existence of the United Nations Mission in Bosnia and Herzegovina (UNMIBH), a Mission remarkably led by an American, Mr. Jacques-Paul Klein, and a Mission whose impressive achievements in restoring law and order and combating organized crime and terrorism have just been noted by the Security Council and the Secretary-General. The Mission was about to end in a few months anyway, to be replaced by a police mission under the auspices of the European Union.

The decision of the United States to oppose the extension of UNMBIH is difficult to understand in many respects. UNMIBH has existed for several years now. It was set up — as was the International Criminal

Tribunal for the Former Yugoslavia — by a unanimous Security Council resolution that had the full support of the United States. At no point did the existence of that Tribunal — before which, in principle, UNMIBH participants could have been called — pose any problems for the United States.

Tomorrow, 1 July 2002, the Statute of the International Criminal Court will enter into force. The United States chose not to ratify the Rome Statute. We respect its position, even if we do not agree with it. In the same spirit, we call on the United States to respect the choice made by States that ratified the Rome Statute or that intend to. That is the case particularly with 15 member States of the European Union, which have all not only ratified the Statute, but have also committed themselves to promoting its universality.

Does the problem we face today not have a solution? Obviously, the answer clearly is no. Certainly, no Security Council member accepted the solution proposed by the United States in paragraph 4 of its text. The American approach would in fact have called into question the commitments made by States that ratified the Rome Statute. I recall that many States, including France, have made constitutional revisions in order to take into account the provisions of the Statute, including the one on immunity. The approach proposed by the United States was therefore not practicable.

Are there any other solutions? The answer clearly is yes. The simplest thing for the United States to do is to withdraw the 46 United States police from the 1,586 that make up the UNMIBH international police component, so that they could then be removed from the jurisdiction of the International Criminal Court in the very unlikely situation that one of those unarmed American policemen commits genocide, a war crime or a crime against humanity that falls within the restrictive provisions of the Rome Statute. There is simply no reason to kill UNMIBH in order to protect the 46 policemen and other United States civilian citizens.

However, there is another path, that of the law, which would allow us to take into account the American concern. Two legal solutions could be considered. The first would be to use paragraph 2 of article 98 of the Rome Statute, which would enable the United States and any other State not a party to the International Criminal Court to conclude with the host country of a United Nations force a bilateral agreement whereby the consent of the United States would be required in the event that the Court required the transfer of an American national member of that force.

The second solution would be, as France and the United Kingdom proposed, to use article 16 of the Rome Statute in order to enable the Security Council to request the International Criminal Court on a case-by-case basis, through a resolution, to not be seized for a one-year renewable period, in the case of an ongoing investigation on a member of a force who is a citizen of a State that is not a party to the Rome Statute.

For France and several Council members, those two options would make it possible to respond to a great extent to the United States concern, in full accordance with the letter of the Rome Statute. Those two possibilities are still before us today.

Together with its partners in the Security Council, France is willing, in coming days, to seek, through a constructive dialogue, a sensible solution that is acceptable to all. What is at stake, as the Secretary-General has stressed, is the very capacity of the United Nations to continue its peacekeeping operations — operations that provide irreplaceable services to the international community as a whole.

Sir Jeremy Greenstock (United Kingdom): I very much appreciate the Secretary-General's presence and what he said to us.

The United Kingdom is firmly committed to the International Criminal Court (ICC) and will continue to work for an effective Court, in accordance with our legal commitments under the Statute and with the European Union's Common Position.

While we understand United States concerns regarding the Court, we do not share them. As the Secretary-General has pointed out, the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) has come to an end for reasons unrelated to its substantive presence in Bosnia and Herzegovina.

We believe that the risk of peacekeeping personnel appearing before the Court is extremely small. Under the so-called complementarity principle, the ICC will take over only if States are unwilling or unable to investigate. Allegations of crimes will thus, in most cases, continue to be investigated by the authorities of the State with jurisdiction. In the United Kingdom, our authorities would launch an investigation into any allegations that a British soldier

had committed a crime which fell within the ICC Statute, so that we can be as certain as it is possible to be that no British soldier will ever come before the Court.

We believe also that the international community's forces in Bosnia, including those of the United States, are doing an important job and need to be allowed to complete their role. We therefore very much regret the United States veto, the reasons for which do not appear fully clear when the International Criminal Tribunal for the Former Yugoslavia (ICTY) continues to have jurisdiction in the former Yugoslavia regardless. Like France, we very much hope that we shall soon be able to find a mutually acceptable solution.

The United Kingdom pays tribute to the Special Representative in Bosnia and Herzegovina and to his whole team in UNMIBH for the superb work that they have performed to date.

Mr. Valdivieso (Colombia) (spoke in Spanish): Given the impossibility of extending the United Nations Mission in Bosnia and Herzegovina (UNMIBH), my delegation would like to make the following statement.

Colombia has participated in this process with a constructive attitude, taking into account three aspects.

The first aspect concerns our relationship to the Rome Statute as a signatory country whose Congress, besides approving the constitutional reform, has already begun the process of considering the law to approve the Treaty. That law is currently being reviewed by the Constitutional Court prior to ratification, which will definitely take place very soon. This circumstance imposes obligations on us, the first of which is that the State must act in a way that is compatible with the Statute of the International Criminal Court (ICC).

A second aspect — which we have consistently highlighted — is the position of the United States, a country that has put forward a well-known position, which we understand and which we have contributed to analysing in a realistic manner, with a view to achieving agreement in order to preserve the cohesiveness of the Council and in particular to safeguard the instruments available to the Council to guarantee international peace and security.

We believe that progress has been made in the deliberations and in the various consultations that have taken place. We believe that progress can be made towards achieving unanimity on this crucial subject.

We believe in particular that the principle of complementarity which is present throughout and informs the Statute, as well as other provisions of the Rome Statute taken as a whole — such as, for example, the status of forces agreement (SOFA), which was mentioned by Ambassador Negroponte, among other things — provide broad guarantees for nationals of those countries that are not members of the Treaty. In sum, we know that these interpretations are not entirely satisfactory, even though they are being reaffirmed and emphasized by the Council.

The third aspect concerns the fact that the Council must, first and foremost, take into account the potential implications of such a decision for peacekeeping operations. Such operations are perhaps the most effective and widely used means of maintaining international peace and security. For that reason, we reaffirm our position, which we believe is constructive, and we join in the appeal of the Secretary-General to continue efforts even more intensively than in weeks past, with a view to achieving a common position.

These efforts are even more necessary in a world threatened by terrorism. These threats can be dealt with only if there is political will, which requires robust actions based on resolute agreements among those of us who have the obligation to meet the challenges posed by terrorism.

Mr. Zhang Yishan (China) (*spoke in Chinese*): I should like to begin my statement by thanking the Secretary-General for his presence and for his statement.

China deems it regrettable that the draft resolution on the extension of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) was not adopted. China is in favour of the extension of UNMIBH. We appreciate the contribution it has made to stability and peace in Bosnia and Herzegovina, and we therefore voted in favour of the draft resolution.

I listened attentively to the explanatory statement made earlier by Ambassador Negroponte of the United States. China understands the concerns of the American delegation with respect to the International Criminal

Court (ICC). The Council also held several rounds of consultations on this problem. Regrettably, however, the parties concerned failed to reach an agreement. We hope that the interested parties will continue their consultations on the relevant issues, so as to ensure that this problem will not stand in the way of United Nations peacekeeping operations in Bosnia and Herzegovina and other regions; that it will not adversely affect the stability of the regions concerned; and that it will not jeopardize the efforts made and the achievements registered over the years by the United Nations and by the international community at large.

Mr. Kolby (Norway): First of all, I would like to thank the Secretary-General for his statement.

Norway deeply regrets that the Security Council could not agree on the draft resolution just voted on. The international community is intensively engaged in the vital process of establishing a viable post-war order in Bosnia and Herzegovina. There can be no doubt about the key role played by the United Nations in post-conflict peace-building in that area. This includes support for refugee returns and the promotion of the rule of law, including free and democratic elections. Needless to say, the international community has not given up on Bosnia and Herzegovina through this vote. It must redouble its efforts to carry out the work on the basis of the Dayton Accords.

We would be remiss if, on the very eve of the entry into force of the Rome Statute of the International Criminal Court (ICC), we did not renew, in this Chamber, our full commitment to the new reality of international criminal justice. Norway continues to be a staunch supporter of the Court, which will be formally established tomorrow. That is a historic turning point.

We are convinced that the Statute contains sufficient safeguards against unwarranted or arbitrary prosecutions. It is worthwhile recalling that it can be triggered only when impunity has been demonstrated through lack of genuine national prosecution of mass atrocities. The ICC thus gives total priority to national courts.

Mr. Lavrov (Russian Federation) (*spoke in Russian*): We, too, would like to thank the Secretary-General for the statement that he made.

The Russian delegation, guided by its consistent support for the peacekeeping activity of the international community in Bosnia and Herzegovina, voted in favour of the draft resolution in order to ensure the implementation of the Dayton Agreements. We regret that the draft resolution was not adopted, for reasons which, as has been noted today, are not directly related to the settlement in Bosnia. The reasons relate to the problem of the relationship between the United States and the International Criminal Court. We understand those problems. Over the past few days, working together with other members of the Security Council, we have made real efforts to try to find a solution within the norms of current international law that would also meet the concerns of the United States. We believe it necessary for the Security Council to continue its efforts in order to find consensus very soon.

Mr. Ryan (Ireland): Ireland supports absolutely the extension of the mandate of the United Nations Mission in Bosnia and Herzegovina and the authorization of the Stabilization Force. We therefore voted in favour of the draft resolution. We understand the concerns of the United States with regard to the International Criminal Court, in particular its concerns relating to United States personnel serving in United Nations missions. However, we cannot agree with the decisions at this point on the part of the United States regarding these concerns. We have said all along that we will work with others pragmatically to address these concerns, and that remains our position. We regret very much that this has not proved to be possible today due to an absence of agreement in the Council.

Ireland has ratified the Rome Statute of the International Criminal Court, and is therefore bound by its provisions. Ireland amended its constitution so that it could ratify the Rome Statute. We are also strongly committed to the Common Position of the European Union in relation to the International Criminal Court. The implications of the vote that was taken earlier are extremely serious — for the United Nations and this Council; for United Nations peacekeeping; and for the people of Bosnia and Herzegovina. However, we welcome Ambassador Negroponte's reiteration today of the United States commitment to peacekeeping in the Balkans and elsewhere. We note carefully that unambiguous commitment.

We, the members of the Council, in meeting the situation that has now arisen, must seek to move forward urgently as best we can. I convey my Government's strongest support for the concerns

expressed so succinctly and unequivocally by the Secretary-General in this regard.

The President (*spoke in Arabic*): There are no further speakers on my list.

The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 5.40 p.m.